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TO: United States Patent and Trademark Office

Fax No. 571-273-8300

FROM: Mary Yauger

Fax No. 513-634-3752

Phone No. 513-634-4223

Application No.: 09/489,310

Inventor(s): Gary Stephenson

Filed: 01/21/2000

Docket No.: 7922

Confirmation No.: 5677

**FACSIMILE TRANSMITTAL SHEET AND
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- 1) Transmittal Fee (1 page)
- 2) Reply Brief (7 pages)

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(FAX-USPTO.doc Revised 11/18/2005)

PTO/SB/17 (1-06)

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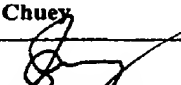
FEE TRANSMITTAL for FY 2007 Patent fees are subject to annual revision. Effective December 8, 2004	Complete if Known	
	Application Number	09/489,310
	Confirmation Number	5677
	Filing Date	01/21/2000
	First Named Inventor	Gary Stephenson
	Examiner Name	Frederick Krass
	Art Unit	1614
TOTAL AMOUNT OF PAYMENT (\$620)		Docket No. 7922

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METHOD OF PAYMENT		FEE CALCULATION (continued)																																														
1. [X] The Director is hereby authorized to charge indicated fees submitted on this form, credit any over payments, and charge any additional fee(s) during the pendency of this application to: Deposit Account Number: 16-2480 Deposit Account Name: The Procter & Gamble Company		5. ADDITIONAL FEES <table border="1"> <thead> <tr> <th>Fee Description</th> <th></th> <th>Fee Paid</th> </tr> </thead> <tbody> <tr> <td>Extension for reply within 1st month</td> <td>(\$120)</td> <td>[X] (\$120)</td> </tr> <tr> <td>Extension for reply within 2nd month</td> <td>(\$450)</td> <td>[]</td> </tr> <tr> <td>Extension for reply within 3rd month</td> <td>(\$1,020)</td> <td>[]</td> </tr> <tr> <td>Extension for reply within 4th month</td> <td>(\$1,590)</td> <td>[]</td> </tr> <tr> <td>Extension for reply within 5th month</td> <td>(\$2,160)</td> <td>[]</td> </tr> <tr> <td>Information Disclosure Statement fee</td> <td>(\$180)</td> <td>[]</td> </tr> <tr> <td>37 CFR 1.16(f) Late Oath/Declaration (nonprovisional)</td> <td>(\$130)</td> <td>[]</td> </tr> <tr> <td>37 CFR 1.17 (q) Surcharge - Late provisional filing fee or cover sheet</td> <td>(\$50)</td> <td>[]</td> </tr> <tr> <td>Non-English specification</td> <td>(\$130)</td> <td>[]</td> </tr> <tr> <td>Notice of Appeal</td> <td>(\$500)</td> <td>[]</td> </tr> <tr> <td>Filing a brief in support of an appeal</td> <td>(\$500)</td> <td>[X] (\$500)</td> </tr> <tr> <td>Request for oral hearing</td> <td>(\$1,000)</td> <td>[]</td> </tr> <tr> <td>Acceptance of unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365 (a) or (c)</td> <td>(\$1,370)</td> <td>[]</td> </tr> <tr> <td>Other:</td> <td></td> <td>[]</td> </tr> </tbody> </table>		Fee Description		Fee Paid	Extension for reply within 1 st month	(\$120)	[X] (\$120)	Extension for reply within 2 nd month	(\$450)	[]	Extension for reply within 3 rd month	(\$1,020)	[]	Extension for reply within 4 th month	(\$1,590)	[]	Extension for reply within 5 th month	(\$2,160)	[]	Information Disclosure Statement fee	(\$180)	[]	37 CFR 1.16(f) Late Oath/Declaration (nonprovisional)	(\$130)	[]	37 CFR 1.17 (q) Surcharge - Late provisional filing fee or cover sheet	(\$50)	[]	Non-English specification	(\$130)	[]	Notice of Appeal	(\$500)	[]	Filing a brief in support of an appeal	(\$500)	[X] (\$500)	Request for oral hearing	(\$1,000)	[]	Acceptance of unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365 (a) or (c)	(\$1,370)	[]	Other:		[]
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3. APPLICATION SIZE FEE: Sheets of Spec and Drawings [] (\$250 for each 50 sheets in excess of 100, except for sequence and program listings) SUBTOTAL (2)+(3) (\$)[]		SUBTOTAL (5) (\$) [\$620]																																														
4. EXTRA CLAIM FEES FOR UTILITY AND REISSUE: <table border="1"> <thead> <tr> <th></th> <th>Extra Claims</th> <th>Fee from Below</th> <th>Fee Paid</th> </tr> </thead> <tbody> <tr> <td>Total Claims [] - 20** = [] x</td> <td>[]</td> <td>=</td> <td>[]</td> </tr> <tr> <td>Independent Claims [] - 3** = [] x</td> <td>[]</td> <td>=</td> <td>[]</td> </tr> <tr> <td>Multiple Dependent claims:</td> <td>[]</td> <td>=</td> <td>[]</td> </tr> </tbody> </table> ** or number previously paid, if greater; For Reissues, see below Fee Description Claims in excess of 20 (\$50 per claim) Independent claims in excess of 3 (\$200 per claim) Multiple dependent claim, if not paid (\$360) **Reissue: each independent claim over 3 and more than in the original patent (\$200 per claim) **Reissue claims: each claim over 20 and more than original patent (\$50 per claim) SUBTOTAL (4) (\$)[]			Extra Claims	Fee from Below	Fee Paid	Total Claims [] - 20** = [] x	[]	=	[]	Independent Claims [] - 3** = [] x	[]	=	[]	Multiple Dependent claims:	[]	=	[]	SUBTOTAL (5) (\$) [\$620]																														
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SUBMITTED BY		Complete (if applicable)	
Name (Print/Type)	S. Robert Chuey	Registration No. (Attorney/Agent)	39,140
Signature		Telephone	(513) 634-0102
		Date	02/15/2007

This collection of information is required by 37 CFR 1.17. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon individual case. Any comments on the amount of time you are required to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P. O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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P&G Case 7922

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of :

GARY (NMN) STEPHENSON :

Confirmation No. 5677

Serial No. 09/489,310 :

Group Art Unit 1614

Filed January 21, 2000. :

Examiner: Frederick F. Krass

For METHODS OF USING A BEVERAGE COMPOSITION

APPELLANT'S REPLY BRIEF

Mail Stop Appeal Brief - Patents

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

Dear Sir:

This Reply Brief is submitted in response to the Examiner's Answer, mailed November 16, 2006. A one (1) month extension of time to file this Reply is hereby requested.

Appellant respectfully disagrees with one characterization the Examiner has made with respect to Appellant's Arguments and the present claims. As the Appellant's Brief appears to meet the Examiner's requirement, no further comments are made herein.

REAL PARTY IN INTEREST

No Changes.

RELATED APPEALS AND INTERFERENCES

No Changes.

STATUS OF CLAIMS

No Changes.

STATUS OF AMENDMENTS

No Changes.

02/16/2007 H6UTEM1 00000028 162480 09489310

01 FC:1402

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02 FC:1251

120.00 DA

Appl. No.09/489,310
Docket No. 7922
Reply Brief dated 2/15/2007
Reply to Examiner's Answer mailed on 11/16/2006
Customer No. 27752

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SUMMARY OF THE CLAIMED SUBJECT MATTER

No Changes.

GROUND FOR REJECTION TO BE APPEALED

No Changes.

ARGUMENTS

Beginning at page 4, and continuing through page 6 of the Answer, the Examiner discusses the interpretation of the claimed language "in need thereof". The Examiner contends that remarks made during prosecution nullify the "In need thereof" language and more restrictive language is now required. The Appellant respectfully disagrees.

The claimed beverage has a pH below about 5, and it is the low acidity of the beverage itself that causes the softening of the dental enamel, hence contributing to the enamel erosion. Thus, not all beverages, nor all people who drink beverages, are "in need thereof". Clearly people who drink only neutral pH beverages (for example, water) are not likely to suffer dental erosion from the neutral pH beverage. Accordingly they are not "in need thereof". Placing unduly restrictive language into the claims will not clarify this position any, and any additional claim language is clearly outside the scope of the holding in the CAFC's decision *Jansen v. Rexall*, 342 f.3d 1329 (Fed. Cir. 2003).

CONCLUSION

It is respectfully submitted that the Examiner's rejection of Claims 23-31 under 35 U.S.C. § 102(b) as being anticipated by US Patent No. 3,681,091, to Kohl et al. should be overturned. For all of the foregoing reasons, it is respectfully asserted that the methods of the present claims patentable over the prior art. Reversal of this rejection is therefore respectfully requested.

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Respectfully submitted,

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Reply Brief dated 2/15/2007
Reply to Examiner's Answer mailed on 11/16/2006
Customer No. 27752

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For: GARY (NMN) STEPHENSON

By 

S. Robert Chuey
Attorney for Appellants
Registration No. 39,140
Telephone: (513) 634-0102

Date: February 15, 2007
Customer No. 27752

Appl. No.09/489,310

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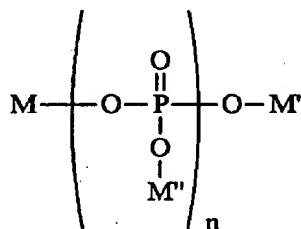
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APPENDIX IAppealed Claims

23. A method of treating dental erosion comprising orally administering to a mammal in need thereof an effective amount of a beverage composition having a pH of less than about 5;

wherein the beverage composition comprises a compound having the structure:



wherein n is an integer averaging from about 7 to about 100 and M, M', and M'' are each, independently, selected from the group consisting of sodium and potassium, and wherein the beverage composition is substantially free of calcium and fluoride.

24. A method according to Claim 23 wherein the beverage composition has a pH from about 2 to about 4.5.
25. A method according to Claim 24 wherein the beverage composition further comprises a sweetener.
26. A method according to Claim 25 wherein M, M', and M'' are each sodium.
27. A method according to Claim 26 wherein n is an integer averaging from about 10 to about 30.
28. A method according to Claim 27 wherein the beverage composition has a pH from about 2.7 to about 3.5.

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29. A method according to Claim 28 wherein n is an integer averaging from about 13 to about 25.

30. A method according to Claim 29 wherein the beverage composition comprises from about 0.1% to about 20% of the sweetener, by weight of the composition.

31. A method according to Claim 30 wherein n is an integer averaging from about 19 to about 25.

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RELATED PROCEEDINGS APPENDIX

None

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EVIDENCE APPENDIX

None